

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Kajeet, Inc.	)	File No. EB-09-IH-1972
	)	
and	)	NAL/Acct. No. 201232080007
	)	FRN 0019614908
Kajeet/Airlink, LLC	)	
	)	
Apparent Liability for Forfeiture	)	NAL/Acct. No. 201232080008
	)	FRN 0018691477

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: December 5, 2011**

**Released: December 5, 2011**

By the Commission:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find that Kajeet, Inc. (“Kajeet”) and its wholly-owned subsidiary Kajeet/Airlink, LLC (“Kajeet/Airlink”) (collectively, the “Companies”) apparently violated sections 225(b)(1), 251(e)(2), and 254(d) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> and sections 52.32(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission’s rules,<sup>2</sup> by apparently willfully and repeatedly failing to contribute fully and timely to the Universal Service Fund (“USF”), the Telecommunications Relay Service (“TRS”) Fund, and the Local Number Portability (“LNP”) cost recovery mechanism. In addition, we find that Kajeet/Airlink apparently violated section 214 of the Act and section 63.24 of the Commission’s rules,<sup>3</sup> by apparently willfully consummating an unauthorized assignment of an international section 214 authorization. Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Kajeet is apparently liable for a total forfeiture of four hundred sixty thousand, one hundred eighty-six dollars (\$460,186) and Kajeet/Airlink is apparently liable for a total forfeiture of five hundred two thousand, six hundred forty-two dollars (\$502,642).

2. We also order the Companies to submit within thirty (30) calendar days a report—supported by a declaration under penalty of perjury from a corporate officer—setting forth in detail their plans to come into compliance with the payment obligations discussed herein and describing the steps Kajeet/Airlink has taken to come into compliance with the requirements of section 214 of the Act and section 63.24 of the Commission’s rules.

<sup>1</sup> 47 U.S.C. §§ 225(b)(1), 251(e)(2), 254(d).

<sup>2</sup> 47 C.F.R. §§ 52.32(a), 54.706(a), 64.604(c)(5)(iii)(A).

<sup>3</sup> 47 U.S.C. § 214; 47 C.F.R. § 63.24.

## II. BACKGROUND

3. The Act codifies Congress's historic commitment to promote universal telecommunications service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services ... contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."<sup>4</sup> In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to register with the Commission, comply with annual and quarterly filing requirements, and contribute to the Universal Service Fund based on their interstate and international end-user telecommunications revenues.<sup>5</sup> The Universal Service Administrative Company ("USAC") currently administers the USF.<sup>6</sup> USAC uses the revenue projections submitted on the quarterly filings to determine each carrier's monthly universal service contribution amount, and bills them accordingly each month.<sup>7</sup> Consistent with the Debt Collection Improvement Act of 1996 ("DCIA"),<sup>8</sup> invoices for USF contributions that have become over 90 days delinquent are transferred to the Commission for further action to collect the outstanding debt.<sup>9</sup> A provider's failure to pay its share into the USF skews the playing field by giving the provider an economic advantage over its competitors, who must then shoulder more than their fair share of the costs of universal service.

4. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."<sup>10</sup> To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate telecommunications relay services.<sup>11</sup>

---

<sup>4</sup> 47 U.S.C. § 254(d).

<sup>5</sup> 47 C.F.R. §§ 54.706(b), 54.711, 64.1195. *See also* 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."). Contributions are based on a contributor's projected revenues, and individual universal service contribution amounts that are based on quarterly filings are subject to an annual true-up. 47 C.F.R. § 54.709(b).

<sup>6</sup> 47 C.F.R. § 54.701(a).

<sup>7</sup> *See* 47 C.F.R. § 54.709.

<sup>8</sup> *See* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996). Pursuant to the "red light rule," the Commission withholds action on applications or other requests for benefits by delinquent debtors and ultimately dismisses such applications or other requests if the delinquency is not resolved. *See* 47 C.F.R. § 1.1910.

<sup>9</sup> *See* <http://www.universalservice.org/fund-administration/contributors/understanding-your-invoice/important-invoicing-deadlines.aspx>. Debt collection procedures may include further administrative efforts both by the Commission and the United States Treasury or, as appropriate, the Commission may refer the delinquent debt to the Department of Justice for enforced collection action. 47 C.F.R. § 1.1917. Collection efforts may result in additional charges, to include interest and penalties, as provided under 31 U.S.C. § 3717, and administrative charges pursuant to 47 C.F.R. §§ 1.1940, 54.713, and 31 C.F.R. § 285.12(j).

<sup>10</sup> 47 U.S.C. § 225(b)(1).

<sup>11</sup> *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301 ¶ 7 (1993). Telecommunications relay services enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users. Such services provide telephone access to a (continued ...)

Pursuant to sections 64.604(c)(5)(iii)(A) and 64.601(b) of the Commission's rules, every provider of interstate telecommunications services and certain other providers of telecommunications must contribute to the TRS Fund based on their interstate end-user revenues.<sup>12</sup> The TRS Fund administrator uses the annual filings to determine each contributor's TRS Fund contribution amount.<sup>13</sup> The TRS Fund administrator bills carriers each July based on their annual revenues.<sup>14</sup>

5. In addition, section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.<sup>15</sup> Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements ... shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."<sup>16</sup> In carrying out this statutory directive, the Commission adopted section 52.32 of its rules, which requires, among other things, that all telecommunications carriers contribute to the costs of local number portability on the basis of their end-user telecommunications revenues for the prior calendar year.<sup>17</sup>

6. The Commission has established specific procedures for the administration of the USF, TRS, local number portability, and other associated federal regulatory programs. Pursuant to section 54.711(a) of the Commission's rules,<sup>18</sup> a carrier is required to file FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet ("annual Worksheet" or "Form 499-A"),<sup>19</sup> for the purpose of determining its USF, TRS Fund, LNP, and North American Numbering Plan ("NANP") administration and regulatory fee payments, and with certain exceptions, to file Quarterly Telecommunications Reporting Worksheets ("quarterly Worksheet" or "Form 499-Q") to determine its monthly universal service contribution amounts.<sup>20</sup> These periodic filings trigger a determination of liability, if any, and subsequent billing and collection by the entities that administer the regulatory programs.<sup>21</sup> Carriers must pay their contribution invoices in a timely manner,<sup>22</sup> and the Commission's

(Continued from previous page)

significant number of Americans who, without it, might not be able to make calls to or receive calls from voice-telephone users. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143 ¶ 5 (2000).

<sup>12</sup> 47 C.F.R. §§ 64.604(c)(5)(iii)(A), 64.601(b).

<sup>13</sup> 47 C.F.R. § 64.604(c)(5)(iii)(B).

<sup>14</sup> Rolka Loube Saltzer Associates, LLC replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. See <http://www.r-l-s-a.com/TRS/>.

<sup>15</sup> 47 U.S.C. § 251(e)(1).

<sup>16</sup> 47 U.S.C. § 251(e)(2).

<sup>17</sup> 47 C.F.R. § 52.32.

<sup>18</sup> 47 C.F.R. § 54.711(a).

<sup>19</sup> See *FCC Form 499-A Telecommunications Reporting Worksheet – Annual Filing*, <http://transition.fcc.gov/Forms/Form499-A/499a2-2011.pdf> (October 2011).

<sup>20</sup> See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001). Carriers report their revenues for the prior quarter by the beginning of the second month in each quarter (*i.e.*, February 1, May 1, August 1, and November 1). See *id.* at 5755, ¶ 19. See also *FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors*, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (April 2010).

<sup>21</sup> See 47 C.F.R. § 54.709. See also 47 C.F.R. §§ 52.32, 64.604(c)(5)(iii)(B).

rules explicitly warn contributors that failure to file forms or submit payments potentially subjects them to enforcement action.<sup>23</sup>

7. Section 214(a) of the Act prohibits any carrier from constructing, extending, or operating any line, and from engaging in transmission through any such line, “unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity” require, or will require, the construction, extension, or operation of the line.<sup>24</sup> In accordance with sections 63.12 and 63.18 of the Commission’s rules, any international carrier seeking authorization for such activities pursuant to section 214 of the Act, including an assignment of an authorization, must obtain approval from the Commission.<sup>25</sup> In particular, pursuant to section 63.24 of the Commission’s rules,<sup>26</sup> the assignment of an international section 214 authorization requires application to, and prior approval from, the Commission. Section 63.24(e) requires that the proposed assignee apply to the Commission for approval prior to the consummation of the proposed assignment.<sup>27</sup> The Commission employs a public interest standard under section 214(a) of the Act that involves the examination of the positive and negative public interest impact of a proposed transaction.<sup>28</sup>

8. Kajeet is a Maryland-based company that has provided telecommunications services since 2007.<sup>29</sup> Kajeet provides prepaid wireless services as reseller for a nationwide wireless carrier.<sup>30</sup>

(Continued from previous page)

<sup>22</sup> See 47 C.F.R. § 54.711(a) (“The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.”); Proposed Fourth Quarter 2011 Contribution Factor, Public Notice, 26 FCC Rcd 12943, 12946 (Managing Dir. 2011) (“Contribution payments are due on the date shown on the invoice.”). See also 47 C.F.R. § 54.713(b) (noting that if a USF “contributor fails to make full payment on or before the date due of ... the monthly invoice provided by the Administrator, the payment is delinquent.”). The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC. See 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(b). A carrier that does not file required worksheets may not receive an invoice from USAC, but is nonetheless required to contribute to the USF, unless its revenues are considered *de minimis*. See *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896 ¶ 5 n.22 (2003) (“*Globcom NAL*”) (subsequent history omitted). The instructions for the Worksheets include tables for carriers to determine their annual contributions. Providers whose annual contribution is less than \$10,000 are considered *de minimis* and exempted from contributing to the USF. See also 47 C.F.R. § 54.708.

<sup>23</sup> 47 C.F.R. § 54.713.

<sup>24</sup> 47 U.S.C. § 214(a).

<sup>25</sup> 47 C.F.R. §§ 63.12, 63.18.

<sup>26</sup> 47 C.F.R. § 63.24. For purposes of section 63.24 of the Commission’s rules, “an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.” 47 C.F.R. § 63.24(b).

<sup>27</sup> 47 C.F.R. § 63.24(e); see also 47 C.F.R. § 63.24(d) (excluding *pro forma* applications, or non-substantial assignments and transfers of control that do not result in a change in the actual controlling party or do not require prior Commission approval) and Note 1 to paragraph (d) (listing the factors relevant to a determination of control).

<sup>28</sup> See 47 U.S.C. § 214(a).

<sup>29</sup> *Response of Kajeet, Inc. and Kajeet/Airlink, LLC to the Enforcement Bureau’s December 10, 2009 Letter of Inquiry*, dated February 28, 2010, at response to Question 3 (“LOI Response”).

<sup>30</sup> *Id.* at response to Questions 3 and 9. Most of the customers of Kajeet’s prepaid wireless service are children and the ability to make international calls from Kajeet handsets has been disabled from all of Kajeet handsets. Because Kajeet offers no international telecommunications services, it does not hold an international section 214 authorization. *Id.* at response to Question 12.

Kajeet/Airlink has provided telecommunications services since April 2009.<sup>31</sup> Kajeet/Airlink provides prepaid wireless services as a reseller for a nationwide wireless carrier and sells prepaid long distance calling cards.<sup>32</sup>

9. In July 2009, USAC referred Airlink Mobile, Inc. (“Airlink Mobile”) to the Enforcement Bureau (the “Bureau”) for potential enforcement action, alleging that Airlink Mobile had failed to comply with the Commission’s USF contribution rules. On August 10, 2009, the Bureau issued a letter of inquiry (“LOI”) to Airlink Mobile seeking information about its compliance with USF and other related regulatory obligations.<sup>33</sup> Airlink Mobile did not respond to the LOI. Subsequent investigation revealed that Airlink Mobile was no longer in business and that its assets had apparently been purchased by the Companies. On December 10, 2009, the Bureau issued an LOI to the Companies seeking information about their compliance with USF and other related regulatory obligations and Kajeet/Airlink LLC’s acquisition of certain assets of Airlink Mobile.<sup>34</sup> The LOI Response and supplemental information developed through our investigation indicate that both Kajeet and Kajeet/Airlink failed to contribute fully and timely to the USF, the TRS Fund, and the LNP cost recovery mechanism.<sup>35</sup> In addition, the LOI Response indicates that Kajeet/Airlink consummated a substantial assignment of an international section 214 authorization without prior Commission approval.<sup>36</sup>

<sup>31</sup> *Id.* at response to Question 10.

<sup>32</sup> *Id.* at response to Question 9.

<sup>33</sup> *Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to David Stanek, Chief Executive Officer, Airlink Mobile, Inc., dated August 10, 2009.*

<sup>34</sup> *Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Daniel Neal, Chief Executive Officer, Kajeet Inc. and Kajeet/Airlink LLC, dated December 10, 2009 (“LOI”).*

<sup>35</sup> *See* LOI Response at response to Question 18; *see also* Email from Stefani Watterson, USAC, to Kathy Berthot, Attorney-Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, dated December 16, 2010 (attaching USAC invoices and billing history for Kajeet and Kajeet/Airlink) (“First Watterson Email”); Email from Stefani Watterson, USAC, to Kathy Berthot, Attorney-Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, dated February 15, 2011 (attaching USAC invoices for Kajeet and Kajeet/Airlink) (“Second Watterson Email”); Email from Kristin Berkland, USAC, to Kathy Berthot, Attorney-Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, dated October 26, 2011 (“Berkland Email”); Email from Marina Aparicio, NECA, to Kathy Berthot, Attorney-Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, dated January 7, 2011 (attaching NECA invoices and payment history for Kajeet and Kajeet/Airlink) (“Aparicio Email”); Email from Karen Laffey, Neustar, Inc., to Kathy Berthot, Attorney-Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, dated January 24, 2011 (“First Laffey Email”); Email from Karen Laffey, Neustar, Inc., to Kathy Berthot, Attorney-Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, dated October 26, 2011 (“Second Laffey Email”).

<sup>36</sup> *See* LOI Response at response to Questions 10, 12, Attachment C. The Companies requested confidential treatment of “all of the materials provided herein by Kajeet, which relates specifically to the acquisition of certain assets by Kajeet/Airlink LLC.” *Id.* at 1. Accordingly, the details concerning Kajeet/Airlink’s acquisition of certain assets of Airlink Mobile are discussed in an Appendix hereto, and we are treating the Appendix as confidential at this time. 47 C.F.R. § 0.459(d)(3) (“The Commission may defer acting on requests that materials or information submitted to the Commission be withheld from public inspection until a request for inspection has been made pursuant to § 0.460 or § 0.461. The information will be accorded confidential treatment ... until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted.”).

### III. DISCUSSION

10. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>37</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>38</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>39</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>40</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>41</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>42</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>43</sup> The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has violated the Act or a Commission rule.<sup>44</sup>

11. The fundamental issues in this case are whether Kajeet and Kajeet/Airlink apparently violated the Act and the Commission’s rules by willfully or repeatedly failing to make required contributions to the USF, TRS Fund, and LNP cost recovery mechanism, and whether Kajeet/Airlink apparently violated the Act and the Commission’s rules by willfully or repeatedly failing to obtain Commission approval prior to consummating the assignment of an international section 214 authorization. We answer these questions in the affirmative. As set forth below, we conclude that the Companies are apparently liable for a forfeiture for their apparent willful and repeated violations of sections 214, 225(b)(1), 251(e)(2), and 254(d) of the Act<sup>45</sup> and sections 52.32(a), 54.706(a), 63.24, and 64.604(c)(5)(iii)(A) of the Commission’s rules.<sup>46</sup> Based on the facts and circumstances before us, we therefore conclude that Kajeet is apparently liable for a total forfeiture of four hundred sixty thousand, one hundred eighty-six dollars (\$460,186) and Kajeet/Airlink is apparently liable for a total forfeiture of five hundred two thousand, six hundred forty-two dollars (\$502,642).

<sup>37</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>38</sup> 47 U.S.C. § 312(f)(1).

<sup>39</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>40</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) (“*Southern California Broadcasting*”).

<sup>41</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing an NAL for, *inter alia*, a cable television operator’s repeated violation of the cable signal leakage rules).

<sup>42</sup> *Southern California Broadcasting*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362 ¶ 9.

<sup>43</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>44</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

<sup>45</sup> 47 U.S.C. §§ 214, 225(b)(1), 251(e)(2), 254(d).

<sup>46</sup> 47 C.F.R. §§ 52.32(a), 54.706(a), 63.24, 64.604(c)(5)(iii)(A).



**A. Kajeet and Kajeet/Airlink Apparently Failed to Make Full and Timely Universal Service Fund Contributions**

12. We conclude that Kajeet and Kajeet/Airlink both apparently violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by apparently willfully and repeatedly failing to contribute fully and timely to the universal service support mechanisms.<sup>47</sup> Section 54.706(a) of the Commission's rules unambiguously directs that "entities [providing] interstate telecommunications to the public ... for a fee ... contribute to the universal service support mechanisms."<sup>48</sup> "Interstate telecommunications" include, among other things, "resale of interstate services" and "prepaid calling card" services such as those provided by Kajeet and Kajeet/Airlink.<sup>49</sup> The Companies do not dispute that Kajeet and Kajeet/Airlink were required to make USF contributions at all relevant times.<sup>50</sup>

13. Kajeet made only partial payments on its USF invoice for the monthly payments due in May 2009, January 2010, and January 2011, and failed to make any of the required monthly payments due in June 2009 through December 2009, February 2010 through December 2010, and May through June 2011.<sup>51</sup> As a result of its failures to pay, Kajeet maintained outstanding USF balances every month between May 2009 and June 2011.<sup>52</sup> Kajeet's failure to comply fully and timely with the USF requirements for 23 of the last 30 months also afforded it a financial benefit and an economic advantage over its competitors who complied with their USF obligations. Based on the record developed in our investigation, we find that Kajeet has apparently violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by apparently willfully and repeatedly failing to contribute fully and timely to the USF.

<sup>47</sup> 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

<sup>48</sup> 47 C.F.R. § 54.706(a).

<sup>49</sup> See *id.*

<sup>50</sup> See LOI Response at response to Question 18.

<sup>51</sup> See *id.*; see also First Watterson Email, Second Watterson Email, Berkland Email. As of October 2011, Kajeet's USAC invoices reflected a credit balance.

<sup>52</sup> The apparent violations continued with each subsequent day on which Kajeet failed to make full payment. See *Globcom, Inc. d/b/a Globcom Global Communications*, Order of Forfeiture, 21 FCC Rcd 4710, 4723, ¶ 35 n.105 (2006) ("*Globcom Forfeiture Order*") ("Each failure to pay the amount due each month constituted a violation that continued for more than 10 days."). USAC's practice is to apply partial payments to the oldest debt carried on USAC's books first, and not the current billed amount. See *Intellicall Operator Services*, Forfeiture Order, 15 FCC Rcd 21771, 21772, ¶ 6 n.8 (2000). This practice was codified by the Commission in 2007. See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16381, ¶ 16 (2007); 47 C.F.R. § 54.713(e). Each violation is considered continuing until cured by full payment of each monthly obligation, as provided on the corresponding invoices. See *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7238-39, ¶ 15 (2008) ("*Telrite NAL*"); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6139-40, ¶¶ 31-33 (2008) ("*Compass Global NAL*"); *Global Crossing North America, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6110, 6120-22, ¶¶ 21-25 (2008) ("*Global Crossing NAL*"); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15941, ¶ 24 & n.69 (2007); *Matrix Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544, 13546, ¶ 7 (2000); *Conquest Operator Services Corp.*, Order of Forfeiture, 14 FCC Rcd 12518, 12524-25, ¶ 16 (1999).

14. Kajeet/Airlink began operating in April 2009, but did not make any USF contributions until December 2010.<sup>53</sup> The Companies indicate in the LOI Response that Kajeet/Airlink “has not yet contributed to the USF, nor has it filed any Form 499-Qs.”<sup>54</sup> The Companies claim that “[d]ue to the severe economic turbulence of 2009, we focused on making sure this entity was able to operate and survive during the short time we’ve had to stabilize the customer base supported by the assets acquired by Kajeet/Airlink.”<sup>55</sup> The Companies further assert that they were in the process of preparing a 2010 Form 499-A for Kajeet/Airlink so that “we can fulfill the appropriate USAC obligations for this entity.”<sup>56</sup> According to USAC records, Kajeet/Airlink failed to file any quarterly Worksheets until May 2010, and did not file its 2010 annual Worksheet until September 21, 2010, more than five months after it was due. Based on the record before us, including the revenues reported in Kajeet/Airlink’s 2010 annual Worksheet,<sup>57</sup> Kajeet/Airlink would not have qualified for the *de minimis* exemption from contributing to the USF during 2009 and therefore should have filed quarterly Worksheets beginning in May 2009.<sup>58</sup> Because Kajeet/Airlink failed to file any required Worksheets until May 2010, USAC did not begin sending it invoices until July 2010.<sup>59</sup> Kajeet/Airlink failed to make any payments on its USF invoices for the monthly payments due in August 2010 through November 2010, and made only a partial payment in December 2010.<sup>60</sup> Kajeet/Airlink also failed to make any payments on its USF invoices for the monthly payments due in January, March, April, and May 2011, and made only a partial payment in February 2011.<sup>61</sup> Based on the record developed in our investigation, we find that Kajeet/Airlink has apparently violated section 254(d) of the Act and section 54.706(a) of the Commission’s rules by apparently willfully and repeatedly failing to contribute fully and timely to the USF.

<sup>53</sup> See First Watterson Email, Second Watterson Email.

<sup>54</sup> LOI Response at response to Question 18.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> See Kajeet/Airlink, LLC, 2010 FCC Form 499-A.

<sup>58</sup> As set forth in detail in the attached confidential Appendix, Kajeet/Airlink acquired the assets of a telecommunications provider in April 2009. The instructions for the quarterly Worksheets explicitly provide that “[w]here an entity obtains, through purchase, merger or transfer, the telecommunications operations or customer base of a telecommunications provider during a quarter, the acquiring company must report all telecommunications revenues associated with such operations or customer base including revenues billed in the quarter prior to the date of acquisition.” See *FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors*, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (April 2010). Therefore, Kajeet/Airlink should have filed a quarterly Worksheet on May 1, 2009 which included revenues billed during the prior quarter (January 1 - March 31, 2009) and projected revenues for the upcoming quarter (July 1 – September 30, 2009).

<sup>59</sup> See *supra* note 22. A carrier that does not file the required Worksheets may not receive an invoice from USAC, but is nonetheless required to contribute to the USF, unless its revenues are considered *de minimis*. See *Globcom NAL*, 18 FCC Rcd at 19896, ¶ 5 n.22. USAC included a true-up adjustment for 2009 based on Kajeet/Airlink’s late-filed 2010 Form 499-A (reporting revenues for 2009) in three equal installments in Kajeet/Airlink’s October, November and December 2010 invoices. See Second Watterson Email.

<sup>60</sup> See First Watterson Email, Second Watterson Email. As noted above, the violations continued with each subsequent day on which Kajeet/Airlink failed to make full payment. See *supra* note 52.

<sup>61</sup> See Berkland Email. As of October 2011, Kajeet/Airlink’s USAC invoices reflected a credit balance of approximately \$12,000 but it had a past due balance to USAC (in the form of delinquent debt transferred to the Commission pursuant to the DCIA transfer process) of approximately \$39,000. See *id.*



**B. Kajeet and Kajeet/Airlink Apparently Failed To Make Full and Timely TRS Fund Contributions**

15. We also find that Kajeet and Kajeet/Airlink apparently violated section 225(b)(1) of the Act and section 64.604(c)(5)(iii)(A) of the Commission's rules by apparently willfully and repeatedly failing to contribute fully and timely to the TRS Fund.<sup>62</sup> As interstate telecommunications carriers, Kajeet and Kajeet/Airlink were obligated to contribute to the TRS Fund on the basis of the interstate end-user telecommunications revenues reported on their annual Worksheets.<sup>63</sup> A carrier's contribution to the TRS Fund is based on its subject revenues for the prior calendar year and a contribution factor determined annually by the Commission.<sup>64</sup> Subject carriers must make TRS contributions on an annual basis, with certain exceptions that are not applicable to Kajeet and Kajeet/Airlink.<sup>65</sup>

16. The record demonstrates that Kajeet and Kajeet/Airlink failed to make full and timely contributions to the TRS Fund in 2010.<sup>66</sup> The TRS Fund administrator invoiced Kajeet for an adjustment to its 2009 TRS Fund contribution on May 4, 2010, with a due date of May 26, 2010, and invoiced Kajeet for its 2010 TRS Fund contribution on July 4, 2010, with a due date of July 26, 2010.<sup>67</sup> The TRS Fund administrator invoiced Kajeet/Airlink for its 2010 TRS Fund contribution on November 4, 2010, with a due date of November 26, 2010.<sup>68</sup> As of January 10, 2011, however, neither Kajeet nor Kajeet/Airlink had made any payments toward their TRS obligations for 2010.<sup>69</sup> Based on the record developed in our investigation, we find that Kajeet and Kajeet/Airlink have apparently violated section 225(b)(1) of the Act and section 64.604(c)(5)(iii)(A) of the Commission's rules by apparently willfully and repeatedly failing to make required TRS Fund contributions in 2010.

**C. Kajeet and Kajeet/Airlink Apparently Failed To Make Full and Timely Contributions to the LNP Cost Recovery Mechanism**

17. We find that Kajeet and Kajeet/Airlink apparently violated section 251(e)(2) of the Act and section 52.32(a) of the Commission's rules by apparently willfully and repeatedly failing to contribute fully and timely to the LNP cost recovery mechanism.<sup>70</sup> As telecommunications carriers, Kajeet and Kajeet/Airlink were obligated to contribute to the LNP cost recovery mechanism on the basis of the end-user telecommunications revenues reported on their annual Worksheets.<sup>71</sup>

---

<sup>62</sup> 47 U.S.C. § 225; 47 C.F.R. § 64.604(c)(5)(iii)(A).

<sup>63</sup> *Id.* See also 47 C.F.R. § 64.604(c)(5)(iii)(B) (setting forth methods of computation and payment of contributions to TRS Fund).

<sup>64</sup> 47 C.F.R. § 64.604(c)(5)(iii)(B).

<sup>65</sup> *Id.* Under the Commission's rules, each subject carrier must contribute at least \$25 per year, and providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, providers may divide their contributions into equal monthly payments. *Id.*

<sup>66</sup> See Aparicio Email.

<sup>67</sup> See *id.* The TRS Fund administrator also issued a credit adjustment invoice to Kajeet on October 4, 2010. See *id.*

<sup>68</sup> See *id.* The TRS Fund administrator did not invoice Kajeet/Airlink until November 2010 because it filed its 2010 annual Worksheet late. See *id.*

<sup>69</sup> See *id.*

<sup>70</sup> 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.32(a).

<sup>71</sup> 47 C.F.R. § 52.32(a).

18. The record demonstrates that Kajeet and Kajeet/Airlink failed to contribute fully and timely to the LNP cost recovery mechanism in 2010 and 2011.<sup>72</sup> The LNP administrator invoiced Kajeet monthly throughout 2010 and 2011 and began sending Kajeet/Airlink monthly invoices in October 2010.<sup>73</sup> As of October 26, 2011, however, Kajeet had not made any payments towards its LNP administration obligations for 2010 or 2011.<sup>74</sup> Kajeet/Airlink did not make any payments towards its LNP administration obligations for 2010 until July 2011 and, as of October 26, 2011, had not made any payments towards its LNP administration obligations for 2011.<sup>75</sup> Based on the record developed in our investigation, we find that Kajeet and Kajeet/Airlink have apparently violated section 251(e)(2) of the Act and section 52.32(a) of the Commission's rules by apparently willfully and repeatedly failing to contribute to the LNP cost recovery mechanism in 2010 and 2011.

**D. Kajeet/Airlink Apparently Failed to Obtain Commission Approval Prior to Consummating the Assignment of an International Section 214 Authorization**

19. We find that Kajeet/Airlink apparently violated section 214 of the Act and section 63.24 of the Commission's rules by apparently willfully consummating the assignment of an international section 214 authorization without prior Commission approval.<sup>76</sup> Under section 63.24 of the Commission's rules,<sup>77</sup> an assignment of an international section 214 authorization requires application to, and approval from, the Commission. The proposed assignee must apply to the Commission for approval prior to the consummation of the proposed assignment.<sup>78</sup> Based on the record developed in our investigation, as set forth in detail in the attached confidential Appendix, we find that Kajeet/Airlink has apparently violated section 214 of the Act and section 63.24 of the Commission's rules by apparently willfully failing to obtain Commission approval prior to consummating the assignment of an international section 214 authorization.

**E. Proposed Forfeitures**

20. Section 503(b)(1) of the Act provides that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>79</sup> Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.<sup>80</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator,

<sup>72</sup> See First Laffey Email, Second Laffey Email.

<sup>73</sup> See First Laffey Email, Second Laffey Email. The LNP administrator did not begin invoicing Kajeet/Airlink until October 2010 because it filed its 2010 annual Worksheet late. See First Laffey Email.

<sup>74</sup> See First Laffey Email, Second Laffey Email.

<sup>75</sup> See First Laffey Email, Second Laffey Email.

<sup>76</sup> 47 U.S.C. § 214; 47 C.F.R. § 63.24.

<sup>77</sup> 47 C.F.R. § 63.24.

<sup>78</sup> 47 C.F.R. § 63.24(e).

<sup>79</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

<sup>80</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008).

the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require,”<sup>81</sup> as well as our forfeiture guidelines.<sup>82</sup>

### 1. Kajeet

21. We find that Kajeet made only partial payments to the USF in May 2009, January 2010, and January 2011, and failed to make any required monthly payments in June 2009 through December 2009, February 2010 through December 2010, and May 2011 through June 2011.<sup>83</sup> Nonpayment of universal service contributions is an egregious offense. It not only deprives the USF of resources necessary to preserve and advance universal service, but it also bestows on delinquent entities an unfair competitive advantage by shifting to compliant contributors the economic costs and burdens associated with universal service. An entity’s failure to make required universal service contributions frustrates Congress’s policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.<sup>84</sup> The Commission has established a base forfeiture amount of \$10,000 for each month in which a contributor has failed to fully pay required universal service contributions and \$20,000 for each month in which a contributor has failed to make any required universal service contribution,<sup>85</sup> plus an upward adjustment based on one-half of the company’s approximate unpaid contributions.<sup>86</sup> In addition, the Commission has treated failures to pay universal service and other obligations as continuing violations.<sup>87</sup> Our forfeiture calculation therefore reflects not only violations that began within the last twelve months, but also violations that began prior to the last twelve months and continued during the twelve-month period preceding this NAL.

22. As a result, we find that Kajeet is apparently liable for a forfeiture for apparently willfully and repeatedly failing to contribute fully and timely to the USF on a total of nineteen occasions between September 2009 and June 2011.<sup>88</sup> Accordingly, we assess a \$20,000 forfeiture for each of the seventeen months in which Kajeet failed to remit any contribution toward its outstanding USF obligation.<sup>89</sup> We also assess a \$10,000 forfeiture for two months in which Kajeet failed to fully pay its required universal service contribution, as provided on the corresponding invoices.<sup>90</sup> Thus, we find Kajeet apparently liable for a base forfeiture of \$360,000 for its apparent willful and repeated failures to contribute fully and timely to the USF on nineteen occasions between September 2009 and June 2011. Moreover, consistent

<sup>81</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>82</sup> 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): Guidelines for Assessing Forfeitures.

<sup>83</sup> See *supra* para. 13.

<sup>84</sup> See 47 U.S.C. § 254(d).

<sup>85</sup> See *OCMC, Inc.*, Order of Forfeiture, 21 FCC Rcd 10479, 10482 ¶ 10 (2006) (“*OCMC Forfeiture Order*”); *Globcom Forfeiture Order*, 21 FCC Rcd at 4722 ¶ 33.

<sup>86</sup> See *OCMC Forfeiture Order*, 21 FCC Rcd at 10482 ¶ 10; *Globcom Forfeiture Order*, 21 FCC Rcd at 4722 ¶ 33.

<sup>87</sup> See *Telrite NAL*, 23 FCC Rcd at 7245-46 ¶ 36 (proposing \$924,212 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions); *Compass Global NAL*, 23 FCC Rcd at 6140-42 ¶¶ 34-38 (proposing \$828,613.44 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions); *Global Crossing NAL*, 23 FCC Rcd at 6120-23 ¶¶ 21-27 (proposing \$10,518,013 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions).

<sup>88</sup> We note that Kajeet’s violations for the months of May through August 2009 were cured more than one year ago.

<sup>89</sup> These months consist of September 2009 through December 2009, February 2010 through December 2010, and May and June 2011. See *supra* para. 13.

<sup>90</sup> These months are January 2010 and January 2011. See *supra* para. 13.

with our approach for assessing liability for apparent USF violations, and taking into account all the factors enumerated in section 503(b)(2)(E) of the Act, we also add an upward adjustment of \$66,966 to the base forfeiture—approximately one-half of the largest amount of Kajeet’s unpaid USF contributions during the period at issue.<sup>91</sup> We therefore find Kajeet apparently liable for a forfeiture of four hundred twenty-six thousand, nine hundred sixty-six dollars (\$426,966) for its apparent willful and repeated failures to contribute fully and timely to the USF.

23. We also find that Kajeet is apparently liable for a forfeiture for apparently willfully and repeatedly failing to make required TRS contributions in 2010. Where a provider fails to satisfy its TRS obligations, it thwarts the purpose for which Congress established section 225(b)(1) of the Act and its implementing regulations – to ensure that telecommunications relay services “are available to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”<sup>92</sup> The Commission has generally established a base forfeiture amount of \$10,000 for each instance in which a contributor fails to make required TRS contributions and an upward adjustment based on one-half of the company’s approximate unpaid contributions.<sup>93</sup> We assess a \$10,000 forfeiture for Kajeet’s failure to pay its TRS Fund contributions in 2010 and an upward adjustment of \$3,220, approximately one-half of Kajeet’s unpaid TRS Fund contributions. We therefore find Kajeet apparently liable for a forfeiture of thirteen thousand, two hundred twenty dollars (\$13,220) for its apparent willful and repeated failure to contribute fully and timely to the TRS Fund.

24. Additionally, we conclude that Kajeet is apparently liable for a forfeiture for apparently willfully and repeatedly failing to make full and timely contributions toward LNP cost recovery mechanisms in 2010 and 2011. The failure of carriers to make required LNP contributions severely hampers the Commission’s ability to ensure that the cost of establishing number portability arrangements are “borne by all telecommunications carriers on a competitively neutral basis” as Congress envisioned.<sup>94</sup> The Commission has prescribed a \$10,000 base forfeiture amount for failure to pay LNP contributions.<sup>95</sup> We find Kajeet apparently liable for a forfeiture of twenty thousand dollars (\$20,000) for its apparent willful and repeated failures to make full LNP payments in 2010 and 2011.

## 2. Kajeet/Airlink

25. Initially, we note that although Kajeet/Airlink has been providing telecommunications service since April 2009, it failed to file any quarterly Worksheets until May 2010 and filed its 2010 annual Worksheet, which was due April 1, 2010, more than five months late on September 21, 2010. A carrier’s failure to file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF, TRS, NANP, LNP, and regulatory fee programs. By failing to report its revenue, Kajeet/Airlink avoided making full and timely payment into these programs and unilaterally shifted to compliant carriers and their customers the economic costs associated with the programs.<sup>96</sup>

<sup>91</sup> See *supra* para. 13. This amount includes Kajeet’s largest unpaid balance to USAC plus delinquent debt transferred to the Commission pursuant to the DCIA transfer process.

<sup>92</sup> 47 U.S.C. § 225(b)(1).

<sup>93</sup> See *Globcom NAL*, 18 FCC Rcd at 19904 ¶ 29.

<sup>94</sup> 47 U.S.C. § 251(e)(2).

<sup>95</sup> See *Telrite NAL*, 23 FCC Rcd at 7245 ¶ 34.

<sup>96</sup> Kajeet/Airlink should have filed Worksheets beginning in May 2009. See *supra* note 58 and accompanying text. Although the Worksheets were due on specific dates, Kajeet/Airlink’s failure to report revenue had a continuing harmful impact on various programs because the relevant fund administrators could not properly assess (continued ...)

26. We find that Kajeet/Airlink failed to make any required monthly payments to the USF in August 2009 through November 2010, and in January, March, April and May 2011, and made only partial payments in December 2010 and February 2011.<sup>97</sup> We accordingly find that Kajeet/Airlink is apparently liable for a forfeiture for apparently willfully and repeatedly failing to contribute fully and timely to the USF on a total of twenty-two occasions between August 2009 and May 2011. We accordingly assess a \$20,000 forfeiture for each of the twenty months in which Kajeet/Airlink failed to remit any contribution toward its outstanding USF obligation.<sup>98</sup> We also assess a \$10,000 forfeiture for the two months in which Kajeet/Airlink failed to fully pay its required universal service contribution.<sup>99</sup> Thus, we find Kajeet/Airlink apparently liable for a base forfeiture of \$420,000 for its willful and repeated failures to contribute fully and timely to the USF on twenty-two occasions between August 2009 and May 2011. We also conclude that an upward adjustment to the base forfeiture associated with Kajeet/Airlink's failure to contribute to the USF is appropriate. Accordingly, taking into account all of the factors enumerated in section 503(b)(2)(E) of the Act, we propose an upward adjustment of \$35,185, approximately one-half of the largest amount of Kajeet/Airlink's unpaid USF contributions during the period at issue. We therefore find Kajeet/Airlink apparently liable for a forfeiture of four hundred fifty-five thousand, one hundred eighty-five dollars (\$455,185) for its apparent willful and repeated failures to contribute fully and timely to the USF.

27. We also find that Kajeet/Airlink is apparently liable for a forfeiture for apparently willfully and repeatedly failing to make required TRS contributions in 2010. We assess a \$10,000 forfeiture for Kajeet/Airlink's failure to pay its TRS Fund contributions in 2010 and an upward adjustment of \$1,457, approximately one-half of Kajeet/Airlink's unpaid TRS Fund contributions. We thus find Kajeet/Airlink apparently liable for a forfeiture of eleven thousand, four hundred fifty-seven dollars (\$11,457) for its apparent willful and repeated failure to contribute fully and timely to the TRS Fund.

28. Furthermore, we conclude that Kajeet/Airlink is apparently liable for a forfeiture for apparently willfully and repeatedly failing to make full and timely contributions toward LNP cost recovery mechanisms in 2010 and 2011. As noted above, the Commission has prescribed a \$10,000 base forfeiture amount for failure to pay LNP contributions.<sup>100</sup> We find Kajeet/Airlink apparently liable for a forfeiture of twenty thousand dollars (\$20,000) for its apparent willful and repeated failures to make full LNP payments in 2010 and 2011.

(Continued from previous page)

Kajeet/Airlink's payment obligations. Kajeet/Airlink's failures to file worksheets constitute continuing violations for which the one-year statute of limitations for forfeitures under section 503(b)(2)(B) of the Act is tolled until the violation is cured. *See Telrite NAL*, 23 FCC Rcd at 7244 ¶ 30. Consistent with precedent, however, we exercise our prosecutorial discretion here and decline to propose forfeitures for Kajeet/Airlink's failures to file Worksheets, all of which occurred more than one year prior to the date of this *NAL*. *See, e.g., Omniat International Telecom, LLC d/b/a Omniat Telecom*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 4254, 4265 ¶ 26 (2009); *Compass Global NAL*, 23 FCC Rcd at 6138 ¶ 29. We caution Kajeet/Airlink and other carriers that future enforcement actions may consider all failures to file Worksheets as continuing violations subject to forfeiture action.

<sup>97</sup> *See supra* para. 14. If Kajeet/Airlink had begun filing quarterly Worksheets in May 2009, it would have received its first invoice from USAC no later than July 2009 with its first payment due in August 2009.

<sup>98</sup> These months consist of August 2009 through November 2010, and January, March, April and May 2011. *See supra* para. 14.

<sup>99</sup> These months are December 2010 and February 2011. *See supra* para. 13.

<sup>100</sup> *See Telrite NAL*, 23 FCC Rcd at 7245 ¶ 34.

29. Finally, we find that Kajeet/Airlink is apparently liable for a forfeiture for apparently willfully failing to obtain Commission approval prior to consummating the assignment of an international section 214 authorization. The Commission's *Forfeiture Policy Statement* and implementing rules prescribe a base forfeiture of \$8,000 for an unauthorized substantial assignment.<sup>101</sup> Such forfeiture amount may be adjusted upward or downward depending on the existence of aggravating or mitigating factors. In the instant case, we have taken into consideration Kajeet/Airlink's failure over a period of approximately two years to file a corrective application. On balance and after applying the factors set forth in section 503(b)(2)(E) of the Act, we find that a forfeiture in the amount of \$16,000 is appropriate.<sup>102</sup> Accordingly, we find Kajeet/Airlink apparently liable for a forfeiture of sixteen thousand dollars (\$16,000) for its apparent willful failure to obtain Commission approval prior to consummating the assignment of an international section 214 authorization.

#### IV. CONCLUSION

30. In light of the seriousness, duration, and scope of the apparent violations, we propose a total forfeiture of four hundred sixty thousand, one hundred eighty-six dollars (\$460,186) against Kajeet,<sup>103</sup> consisting of four hundred twenty-six thousand, nine hundred sixty-six dollars (\$426,966) for failure to make full and timely USF contributions; thirteen thousand, two hundred twenty dollars (\$13,220) for failure to make full and timely TRS contributions; and twenty thousand dollars (\$20,000) for failure to make LNP contributions.

31. We also propose a total forfeiture of five hundred two thousand, six hundred forty-two dollars (\$502,642) against Kajeet/Airlink, consisting of four hundred fifty-five thousand, one hundred eighty-five dollars (\$455,185) for failure to make full and timely USF contributions; eleven thousand, four hundred fifty-seven dollars (\$11,457) for failure to make full and timely TRS contributions; twenty thousand dollars (\$20,000) for failure to make LNP contributions; and sixteen thousand dollars (\$16,000) for failure to obtain Commission approval prior to consummating the assignment of an international section 214 authorization.

32. In addition, we order the Companies to submit within thirty (30) calendar days a report—supported by a declaration under penalty of perjury from a corporate officer—setting forth in detail their plans to come into compliance with the payment obligations discussed herein and describing the steps Kajeet/Airlink has taken to come into compliance with the requirements of section 214 of the Act and section 63.24 of the Commission's rules.

33. We caution that additional violations of the Act or the Commission's rules could subject the Companies to further enforcement action. Such action could take the form of higher monetary

<sup>101</sup> See 47 C.F.R. § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17113 (1997).

<sup>102</sup> See e.g., *Shop at Home Holdings, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 23, 25 ¶ 8 (Enf. Bur., Investigations and Hearings Div., 2010) (proposing a \$16,000 forfeiture against an entity which acquired and operated two satellite earth stations without prior Commission approval and failed to file a corrective application for more than two years).

<sup>103</sup> Kajeet and Kajeet/Airlink continue to have unpaid outstanding balances due to the TRS and LNP Administrators and Kajeet/Airlink continues to have an unpaid outstanding balance due to USAC. We note that payment of the forfeitures proposed in this *NAL* does not absolve Kajeet and Kajeet/Airlink of their obligations to pay their delinquent balances. As discussed *supra* at note 9, debt collection procedures may include further administrative efforts both by the Commission and by the United States Treasury or, as appropriate, the Commission may refer the delinquent debt to the Department of Justice for enforced collection action. 47 C.F.R. § 1.1917.



forfeitures, possible disqualification of the Companies' principals from the provision of any interstate common carrier services without the prior consent of the Commission, and/or possible revocation of the Companies' authority to operate.

## V. ORDERING CLAUSES

34. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Act,<sup>104</sup> and section 1.80 of the Commission's rules,<sup>105</sup> that Kajeet, Inc. is hereby **NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE** in the amount of four hundred sixty thousand, one hundred eighty-six dollars (\$460,186) for willfully and repeatedly violating the Act and the Commission's rules.

35. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules that Kajeet/Airlink, LLC is hereby **NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE** in the amount of five hundred two thousand, six hundred forty-two dollars (\$502,642) for willfully and repeatedly violating the Act and the Commission's rules.

36. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, the Companies **SHALL PAY** the full amount of the proposed forfeitures or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeitures.

37. **IT IS FURTHER ORDERED** that the Companies shall submit within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, a report supported by a declaration under penalty of perjury from a corporate officer setting forth in detail the Companies' plans to come into compliance with the payment obligations discussed herein and describing the steps Kajeet/Airlink has taken to come into compliance with the requirements of section 214 of the Act and section 63.24 of the Commission's rules. The report must be mailed to Theresa Z. Cavanaugh, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Suite 4-C330, Washington, D.C. 20554. The Companies shall also transmit a copy of the report via email to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and Kathy Berthot at Kathy.Berthot@fcc.gov.

38. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). The Companies will also send electronic notification within forty-eight (48) hours of the date said payment is made to Terry.Cavanaugh@fcc.gov and Kathy.Berthot@fcc.gov.

---

<sup>104</sup> 47 U.S.C. § 503(b).

<sup>105</sup> 47 C.F.R. § 1.80.

39. The written statement seeking reduction or cancellation of the proposed forfeitures, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Commission's rules.<sup>106</sup> The written statement must be mailed to Theresa Z. Cavanaugh, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. The written statement should also be emailed to Theresa Z. Cavanaugh at [Terry.Cavanaugh@fcc.gov](mailto:Terry.Cavanaugh@fcc.gov) and Kathy Berthot at [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov).

40. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

41. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture and Order under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>107</sup> For answers to questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

42. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by certified mail, return receipt requested, to Daniel Neal, CEO, Kajeet, Inc. and Kajeet/Airlink, LLC, 7101 Wisconsin Ave., Suite 1111, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>106</sup> See 47 C.F.R. §§ 1.80(f)(3), 1.16.

<sup>107</sup> See 47 C.F.R. § 1.1914.